

SJ Quinney College of Law, University of Utah

Utah Law Digital Commons

Utah Code Annotated 1943-1995

1962

Title 16 Corporations Chapter 01-05: Corporations to Consolidation - 1962

Utah Code Annotated

Follow this and additional works at: <https://dc.law.utah.edu/uca>

The Utah Code Annotated digital collection, hosted by Digital Commons, is brought to you for free and open access by the James E. Faust Law Library at the S.J. Quinney College of Law. Funds for this project have been provided by the Institute of Museum and Library Services through the Library Services and Technology Act and are administered by the Utah State Library Division. For more information, please contact valeri.craigle@law.utah.edu.

Recommended Citation

Utah Code Annotated Title 16-1 to 5 (Michie, 1962)

This Book is brought to you for free and open access by Utah Law Digital Commons. It has been accepted for inclusion in Utah Code Annotated 1943-1995 by an authorized administrator of Utah Law Digital Commons. For more information, please contact valeri.craigle@law.utah.edu.

TITLE 16

CORPORATIONS

- Chapter 1. General Provisions, [16-1-1 to 16-1-3 Repealed].
2. Corporations for Pecuniary Profit, [16-2-1 to 16-2-47 Repealed].
3. Stock Transfers, 16-3-1 to 16-3-21.
4. Assessments, 16-4-4 to 16-4-10, 16-4-12 to 16-4-24 [16-4-1 to 16-4-3, 16-4-11 Repealed].
5. Consolidation, [16-5-1 to 16-5-6 Repealed].
6. Nonprofit Corporations, 16-6-1 to 16-6-15 [16-6-16, 16-6-17 Unconstitutional].
7. Corporations Sole, 16-7-1 to 16-7-10.
8. Foreign Corporations, 16-8-5 [16-8-1 to 16-8-4 Repealed].
9. Escheat of Unclaimed Dividends and Assets, [16-9-1 to 16-9-7 Repealed].
10. Business Corporation Act, 16-10-1 to 16-10-143.

CHAPTER 1

GENERAL PROVISIONS

(Repealed by Laws 1961, ch. 28, § 142)

16-1-1 to 16-1-3. Repealed.

Repeal.

These sections (R. S. 1898 & C. L. 1907, §§ 321, 323, 353; L. 1909, ch. 50, § 1; 1913, ch. 10, § 1; C. L. 1917, §§ 868, 870, 899; L. 1923, ch. 14, § 1; R. S. 1933 & C. 1943, 18-1-1 to 18-1-3; L. 1945, ch. 30, § 1) re-

lating to the continuance of existing corporations and the expiration and forfeiture of corporate charters were repealed by Laws 1961, ch. 28, § 142. For present provisions, see 16-10-101 and 16-10-140.

CHAPTER 2

CORPORATIONS FOR PECUNIARY PROFIT

(Repealed by Laws 1961, ch. 28, § 142)

16-2-1 to 16-2-47. Repealed.

Repeal.

These sections (R. S. 1898, §§ 314 to 320, 322, 324 to 339; L. 1899, ch. 52, § 1; 1901, ch. 81, § 1; 1903, ch. 59, § 1; 1903, ch. 94, § 1; 1905, ch. 22, § 1; 1905, ch. 30, § 1; 1905, ch. 111, § 1; 1905, ch. 131, § 1; C. L. 1907, §§ 314 to 320, 322, 324 to 339; L. 1913, ch. 40, § 1; 1917, ch. 3, § 1; C. L.

1917, §§ 860, 860x, 861, 862, 864 to 867, 869, 871 to 887, 945x1; L. 1921, ch. 16, § 1; 1921, ch. 22, § 1; 1923, ch. 57, § 1; 1925, ch. 41, § 1; 1929, ch. 88, § 1; R. S. 1933, §§ 18-2-1 to 18-2-13, 18-2-16 to 18-2-46; L. 1939, ch. 30, § 1; C. 1943, §§ 18-2-1 to 18-2-13, 18-2-16 to 18-2-46; L. 1943, ch. 26, § 1; 1945, ch. 30, §§ 2 to 4; 1951, ch. 23,

§§ 1, 2; C. 1943, Supp., 18-2-17.2, 18-2-17.10, 18-2-17.11; L. 1953, ch. 25, §§ 1, 2; 1955, ch. 22, § 1; 1955, ch. 23, § 1; 1957, ch. 23, § 1) relating to corporations for pecuniary profit, were repealed by Laws 1961, ch. 28, § 142. For present provisions see Utah Business Corporation Act, 16-10-1 et seq.

CHAPTER 3

STOCK TRANSFERS

- Section 16-3-1. Manner of transfer.
 16-3-2. Transfers by persons lacking legal capacity and by fiduciaries.
 16-3-3. Registered owner treated as owner in fact.
 16-3-4. Possession of certificate gives preferred right.
 16-3-5. Delivery of certificate as transfer of title.
 16-3-6. Fraud, revocation, death, lack of consideration—Effect on endorsement.
 16-3-7. Right to rescind transfer—Grounds.
 16-3-8. Bona fide purchasers for value protected.
 16-3-9. Delivery of certificate without endorsement.
 16-3-10. Transfers without delivery of certificate.
 16-3-11. Warranties of transferor.
 16-3-12. Warranty of pledgee or mortgagee.
 16-3-13. Attachment or levy—Necessity of seizure of certificate—Right to new certificate.
 16-3-14. Equitable aid to creditor in attaching certificate.
 16-3-15. Limited lien of corporation on its shares.
 16-3-16. Alteration of certificate—Rights of owner and transferee.
 16-3-17. Lost or destroyed certificates—Replacement.
 16-3-18. Endorsement, how made.
 16-3-19. Owner named in certificate and specified endorsee deemed owner until endorsement.
 16-3-20. Definitions.
 16-3-21. Effective date of chapter's application.

16-3-1. Manner of transfer.—Title to a certificate and to the shares represented thereby can be transferred only:

(1) By delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby; or

(2) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment of [or] power of attorney may be either in blank or to a specified person.

Provided, however,

(a) That the person appearing by the certificate to be the sole owner of the shares represented by such certificate may create a joint tenancy therein by endorsement of the certificate to himself and one or more others "as joint tenants" or "with rights of survivorship" or by using words of similar import and such endorsement shall create a joint tenancy, and delivery shall be presumed.

(b) That the persons appearing by the certificate to be the owners in common of the shares represented by such certificate may create a joint tenancy therein by endorsement of the certificate to themselves or to them-

selves and one or more others "as joint tenants" or "with rights of survivorship" or by using words of similar import and such endorsement shall create a joint tenancy, and delivery shall be presumed.

(c) Nothing in this paragraph shall be construed to limit the means by which joint tenancies in stock shares and certificates may otherwise be created.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or bylaws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

History: L. 1927, ch. 55, § 1; R. S. 1933 & C. 1943, 18-3-1; L. 1955, ch. 24, § 1.

Compiler's Notes.

The 1955 amendment inserted the proviso, subsecs. (a) to (c) before the last paragraph.

The bracketed word "or" was inserted by the compiler.

Comparable Provisions.

The provisions of this chapter, 16-3-1 to 16-3-20 inclusive, reflect the provisions of the Uniform Stock Transfer Act as adopted by this state subsequent to its approval by the national commissioners on uniform state laws. The Uniform Act was also adopted by each of the several states and the District of Columbia. The act is superseded in those states which have since adopted the Uniform Commercial Code.

Omitted from the Utah statute are the following sections of the Uniform Act: Section 18, as to rule applicable to cases not provided for by the act; Section 19, interpretation so as to establish uniformity; section 24, repealing inconsistent acts; section 25, date on which act is to take effect; and section 26, act to be cited as Uniform Stock Transfer Act.

Prior to the 1955 amendment, described above, this section was identical with section 1 of the Uniform Stock Transfer Act.

Cross-References.

Closing of transfer books and fixing record date, 16-10-28.

Contract of decedent to transfer shares of stock enforced against administrator or executor, 75-11-26.

Fiduciary security transfers, 22-5-1 et seq.

1. In general.

Cited in *Lindner v. Utah Southern Oil Co.*, 2 U. (2d) 74, 269 P. 2d 847, 848.

Of course there is no longer any question as to validity of transfer by mere endorsement and delivery of certificate; that was sufficient even before adoption

of Uniform Stock Transfer Act. A "written transfer" did not require assignment and transfer. *Brown v. Wright*, 48 U. 633, 161 P. 448.

2. Purpose of act.

This chapter was adopted to give stock certificates some measure of negotiability. *Untermeyer v. State Tax Comm.*, 102 U. 214, 129 P. 2d 881.

3. Effect of act on Inheritance Tax Law.

This whole chapter deals with the rights and duties of the transferor and transferee of a stock certificate as against each other and against all other claimants, including creditors or persons who seek to obtain or reach the stock by legal process. It is simply a procedural statute dealing with the methods and process of determining or obtaining title to the stock. It does not affect state's right to tax transfer or devolution of stock under Inheritance Tax Law, even though neither the owner nor the certificate is within its borders. *Untermeyer v. State Tax Comm.*, 102 U. 214, 129 P. 2d 881.

4. Authority of agent.

Under this section, in order to transfer stock certificates, signature of owner must be endorsed thereon, or written authority of agent must accompany certificate, and the absence of both is a warning to others to deal at arm's length, and the presentation of a certificate otherwise endorsed is a warning that all is not well, that there may be some limitation on agent's authority so far as use of stock is concerned. *Malia v. Giles*, 100 U. 562, 114 P. 2d 208.

Where husband was engaged in conducting wife's business affairs and borrowed money from bank, signing the notes himself and pledging certificate of wife's stock endorsed with her name but not in her handwriting, bank was put on notice that husband's act might not be within his powers, and it could not accept the certificate

except at its peril. *Malia v. Giles*, 100 U. 562, 114 P. 2d 208.

5. Transfer of stock in building and loan association.

Finding that deceased during his lifetime gave building and loan association stock certificate to his parents, and that if he ever had possession of the certificate he actually handed it over to his parents, intending thereby to transfer to them whatever title he had therein, was supported by competent evidence even though testimony of mother on such point was disregarded as equally within her knowledge and that of deceased. *Harrington v. Inter-State Fidelity Bldg. & Loan Assn.*, 91 U. 74, 63 P. 2d 577.

6. Burden of proof in suit to rescind issuance.

Where plaintiff seeks to rescind an issuance of stock to him as being void as an issue beyond the amount authorized in the charter of the corporation, he made out a prima-facie case by showing that all authorized stock had been issued before the issuance of plaintiff's stock and then the defendant gave evidence that some stock was surrendered to the corporation prior to the reissue, it was then up to the plaintiff to produce evidence that the stock was not surrendered. The burden of proof is used in two significances: First, as the risk of nonpersuasion, and second, as the duty of producing evidence. The party having the risk of nonpersuasion is naturally the one upon whom first falls the duty of going forward with the evidence. Upon meeting their duty of going forward with evidence that all authorized stock had been issued before the issuance of plaintiffs' stock certificate, plaintiffs made out a prima-facie case. Thereupon the burden, in the second meaning of the phrase, shifted to the defendants, but the risk of nonpersuasion, which never shifts, remained with the plaintiffs. *Kartchner v. Horne*, 1 U. (2d) 112, 262 P. 2d 749, 751.

7. Transfer of interest in stock before certificates issued.

A subscriber to stock who, before certificates were issued, assigned all his interest in his shares of stock to another subscriber was entitled to recover the balance due on the written contract of sale, even though no certificates were delivered. *Van Noy v. Gibbs*, 7 U. (2d) 70, 318 P. 2d 351.

8. Compelling issuance of certificate.

If company's officers wrongfully refuse on demand to issue certificate to person entitled thereto, complaint will lie to compel its issuance, and the form of action is not material in this state. *Coray v.*

Perry Irr. Co., 50 U. 70, 74, 166 P. 672, following *Kuhn v. McAllister*, 1 U. 274.

Even prior to adoption of Uniform Stock Transfer Act, the wrongful withholding of a certificate of stock was equivalent to a conversion of the stock itself, and might be so treated by the owner. *Coray v. Perry Irr. Co.*, 50 U. 70, 73, 166 P. 672.

A complaint against a corporation to compel the issuance of a certificate of treasury stock should, among other essential elements, allege in specific terms that plaintiff was entitled to the said shares, the character and amount of the consideration paid therefor, and that he was entitled to the certificate demanded. *Coray v. Perry Irr. Co.*, 50 U. 70, 166 P. 672, setting out form of complaint.

Certificate which was mere evidence of contract by which holder agreed to become stockholder in building and loan association, upon terms and conditions stated therein, was not a certificate of stock within meaning of that term as used in this act so as to require endorsement on the certificate on transfer thereof, a symbolical delivery being sufficient to effect the transfer. *Harrington v. Inter-State Fidelity Bldg. & Loan Assn.*, 91 U. 74, 63 P. 2d 577.

Collateral References.

Corporations § 111.

18 C.J.S. Corporations § 388.

Transfer of shares, 13 Am. Jur. 406, Corporations § 329 et seq.

Conflict of laws as to title and transfer of corporate stock, 131 A. L. R. 192.

Death as revoking power of attorney to transfer corporate stock, 40 A. L. R. 1004.

Duty of officer or director toward one from whom he purchases stock, 84 A. L. R. 615.

Failure to enter transfer of stock on corporate books as affecting liability of transferee for calls and assessments, 60 A. L. R. 112.

Failure to enter transfer of stock on corporate books as affecting liability of transferor for calls or assessments, 45 A. L. R. 137, 104 A. L. R. 638.

Gift of stock, necessity of delivery to complete, 99 A. L. R. 1077, 152 A. L. R. 427, 23 A. L. R. 2d 1171.

Necessity and sufficiency of appropriation to pass title on sale of corporate stock or securities, 78 A. L. R. 1019.

Refusal of corporation to issue, convert, or transfer stock as conversion, 54 A. L. R. 1157.

Regulations, rules, custom, or usage of stock or produce exchange or of stock or produce broker as affecting customers, 79 A. L. R. 592.

Remedy for refusal of corporation or its agent to register or effectuate transfer of stock, 22 A. L. R. 2d 12.

Right or duty of corporation to refuse to transfer stock on books to one presenting properly endorsed certificate, because of knowledge or suspicion of conflicting rights of registered holder or of third person, 139 A. L. R. 273, 75 A. L. R. 2d 746.

Rights, duties, and liability of corporation in connection with transfer of stock of decedent, 7 A. L. R. 2d 1240.

Transfer on corporate books as requisite of gift of stock, 38 A. L. R. 1366.

Validity and construction of restrictions on alienation or transfer of corporate stock, 2 A. L. R. 2d 745, 61 A. L. R. 2d 1318.

Law Reviews.

California and the Uniform Stock Transfer Act, by Homer D. Cratty and Graham L. Sterling, Jr., 19 Calif. Law Review 150.

Negotiation of Stock Certificates by Means of Separate Blank Power, 3 Chicago Law Review 508, case note, Edgerly v. First Nat. Bank, 292 Mass. 181, 197 N. E. 518.

The Legality of Stock after Grants to Corporate Officers, 49 Columbia Law Review 232.

Application of the Uniform Stock Transfer Act to Gifts of Stock, by Leland E. Modesitt, 20 Rocky Mountain Law Review 67.

DECISIONS UNDER FORMER LAW

1. In general.

Prior to adoption of Uniform Stock Transfer Act, recitals on face of certificate that it was "transferable only on the books of the company by endorsement hereon and surrender of this certificate," did not preclude or restrict the right otherwise to sell, transfer, or pledge certificate by endorsement and delivery. *Brown v. Wright*, 48 U. 633, 161 P. 448.

The word "owner" in the former statute was held to mean not only the actual and legal owner, but also the apparent owner named and designated as such on the face of the certificate and the holder thereof in due and regular course of business. Corporation may also be estopped to deny

ownership of certificate. *Brown v. Wright*, 48 U. 633, 161 P. 448.

It was held, prior to adoption of Uniform Stock Transfer Act, that this section should be read into a contract for the sale of corporate stock, and stock certificate should be delivered in accordance with this section. *Makris v. Melis*, 50 U. 544, 167 P. 802, applying Comp. Laws 1907, § 330.

Even prior to adoption of Uniform Stock Transfer Act, title could be transferred to purchaser by delivery of stock certificate, together with a written transfer of the same signed by the owner, without transfer on company's books. *Gowans v. Rockport Irr. Co.*, 77 U. 198, 293 P. 4.

16-3-2. Transfers by persons lacking legal capacity and by fiduciaries.—Nothing in this chapter shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid endorsement, assignment or power of attorney.

History: L. 1927, ch. 55, § 2; R. S. 1933 & C. 1943, 18-3-2.

Cross-References.

Capacity of children, 15-2.

Fiduciaries and trusts, Title 22.

Probate Code, Title 75.

1. Powers of persons laboring under disabilities.

If stock stands in name of a "trustee," that puts company on notice and inquiry before making transfer. *West v. Tintie Standard Min. Co.*, 71 U. 158, 263 P. 490, 56 A. L. R. 1190.

A mere bailee has no authority to transfer the certificate. *State v. Jenson*, 74 U. 527, 542, 280 P. 1046.

Collateral References.

Duty of corporation upon presentation for transfer of stock standing in one's name as trustee or other fiduciary, 56 A. L. R. 1199.

Infant's rights and liabilities on subscription to or purchase of stock, 64 A. L. R. 972.

Right or duty of corporation to refuse to transfer stock on books to one presenting properly endorsed certificate, because of knowledge or suspicion of conflicting rights of registered holder or of third person, 139 A. L. R. 273.

Rights, duties, and liability of corporation in connection with transfer of stock of infant or incompetent, 3 A. L. R. 2d 881.

Rights, powers and duties in respect to sale or transfer of corporate stock in which one holds a legal life estate, 126 A. L. R. 1298.

Transfer of stock to or by executor, administrator, or testamentary trustee as

subject to stock transfer tax, 106 A. L. R. 1441.

Law Review.

The Transfer Agent's Dilemma—Conflicting Claims to Shares of Stock, by Frank L. Dewey, 52 Harvard Law Review 553.

16-3-3. Registered owner treated as owner in fact.—Nothing in this chapter shall be construed as forbidding a corporation:

(1) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner;

(2) To hold liable for calls and assessments a person registered on its books as the owner of shares; or,

(3) To sell or forfeit shares for the payment of delinquent calls or assessments as provided in this title, and to treat the person registered on its books as the owner for the purposes of levying and collecting calls and assessments.

History: L. 1927, ch. 55, § 3; R. S. 1933 & C. 1943, 18-3-3.

Comparable Provision.

Uniform Act, § 3, is identical with subds. 1 and 2 herein, but subd. 3 herein is not included in § 3 of the Uniform Act in its form as recommended by National Conference of Commissioners.

1. In general.

Cited in *Lindner v. Utah Southern Oil Co.*, 2 U. (2d) 74, 269 P. 2d 847, 849.

2. Presumption of ownership.

Presumptively one in whose name stock stands on the company's books is the owner thereof. *Rasmussen v. Sevier Valley Canal Co.*, 48 U. 490, 160 P. 444.

Holder of stock certificate is not required to examine company's books to ascertain validity of the transfer; he need not look beyond recitals of certificate in

regard to his title. *Brown v. Wright*, 48 U. 633, 161 P. 448.

Collateral References.

Registration of transfers on books of corporation, 13 Am. Jur. 425, Corporations § 352 et seq.

Construction and application of provisions of statute, charter, bylaws, or stock certificate conferring upon holders of preferred or other specified class of stock a right to vote in event of nonpayment of dividends or other specified conditions, 154 A. L. R. 418.

Do dividends of stock declared before testator's death pass to legatee of original stock, 172 A. L. R. 364.

Right as between life beneficiaries and remaindermen in corporate dividends or distributions during the life interest, 130 A. L. R. 492, 44 A. L. R. 2d 1277.

16-3-4. Possession of certificate gives preferred right.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine, if at any time prior to the surrender of the certificate to the corporation issuing it another person for value in good faith and without notice of the prior transfer shall purchase and obtain delivery of such certificate with the endorsement of the person appearing by the certificate to be the owner thereof or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person though contained in a separate document.

History: L. 1927, ch. 55, § 4; R. S. 1933 & C. 1943, 18-3-4.

1. Stock certificate endorsed in blank containing power of attorney.

A stock certificate endorsed in blank

containing a power of attorney is general, and the holder may fill in the name of anyone to whom he decides to transfer the certificate. *Howard v. National Copper Bank*, 81 U. 493, 20 P. 2d 610.

Where owner of stock transferred it to

endorsee as security for loan which was paid, certificate not being returned, and son of endorsee who had power of attorney to manage endorsee's business affairs pledged stock to bank for personal loan, held, bank had notice that son was not empowered to do so, and hence it had no title to certificate as against original en-

dorser. *Howard v. National Copper Bank*, 81 U. 493, 20 P. 2d 610.

Collateral References.

Conflict of laws as to title and transfer of corporate stock, 131 A. L. R. 192.

Right of pledgee of corporate stock to have it transferred to him on books of company, 116 A. L. R. 571.

16-3-5. Delivery of certificate as transfer of title.—The delivery of a certificate to transfer title in accordance with the provisions of section 16-3-1 is effectual, except as provided in section 16-3-7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

History: L. 1927, ch. 55, § 5; R. S. 1933 & C. 1943, 18-3-5.

Compiler's Note.

The references in this section to "section 16-3-1" and "section 16-3-7" appeared in Code 1943 as "section 18-3-1" and "section 18-3-7."

Collateral References.

Death as revoking power of attorney to transfer corporate stock, 40 A. L. R. 1004.

Necessity of delivery of stock certificate to complete valid gift of stock, 23 A. L. R. 2d 1171.

16-3-6. Fraud, revocation, death, lack of consideration—Effect on endorsement.—The endorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 16-3-7, though the endorser or transferor:

- (1) Was induced by fraud, duress or mistake to make the endorsement or delivery; or,
- (2) Has revoked the delivery of the certificate, or the authority given by the endorsement or delivery of the certificate; or,
- (3) Has died or become legally incapacitated after the endorsement, whether before or after the delivery of the certificate; or,
- (4) Has received no consideration.

History: L. 1927, ch. 55, § 6; R. S. 1933 & C. 1943, 18-3-6.

Compiler's Note.

The reference in this section to "section 16-3-7" appeared in Code 1943 as "section 18-3-7."

1. Estoppel.

While a stock certificate is not a negotiable instrument, an owner of such stock who entrusts another with his stock certificate endorsed or signed in blank clothes the party to whom the certificate is entrusted with such indicia of ownership that an unauthorized sale or pledge of the certificate by the latter to an innocent purchaser or pledgee for value is binding upon the true owner and prevents him from asserting a paramount interest in the shares. *Adams v. Silver Shield Min. & Mill. Co.*, 82 U. 586, 21 P. 2d 886.

Where husband obtained certificate of stock in connection with an option to purchase which was never exercised, and wife received such certificate in connection with property settlement in divorce proceedings, wife was not purchaser for value as against claim of original owner to the stock. *Adams v. Silver Shield Min. & Mill. Co.*, 82 U. 586, 21 P. 2d 886.

Collateral References.

Corporations—111.

18 C.J.S. Corporations § 388.

Defect or frauds, 13 Am. Jur. 409, Corporations § 332.

Death as revoking power of attorney to transfer corporate stock, 40 A. L. R. 1004.

Validity of contract executed under duress exercised by third person, 4 A. L. R. 864, 62 A. L. R. 1477.

16-3-7. Right to rescind transfer—Grounds.—If the endorsement or delivery of a certificate:

- (1) Was procured by fraud or duress; or,
- (2) Was made under such mistake as to make the endorsement or delivery inequitable; or,

If the delivery of a certificate was made:

- (3) Without authority from the owner; or,
- (4) After the owner's death or legal incapacity;

The possession of the certificate may be reclaimed and the transfer thereof rescinded, unless—

- (a) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful; or,
- (b) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

History: L. 1927, ch. 55, § 7; R. S. 1933 & C. 1943, 18-3-7.

1. Election of remedies.

If corporation makes a wrongful transfer of stock, this renders it liable in conversion, or it may be compelled to restore said stockholder to his rights as such. That is to say, the corporation may be compelled to purchase an equal amount of stock and register it for the benefit of the wronged stockholder, or plaintiff may treat registration of the invalid transfer as a conversion of his shares by defendant company and claim damages. This election is with plaintiff and not with defendant. *West v. Tintie Standard Min. Co.*, 71 U. 158, 263 P. 490, 56 A. L. R. 1190.

If defendant company, when sued by stockholder whose stock has been wrongfully transferred, has sufficient of its capital stock in the treasury from which reinstatement of plaintiff as a stockholder can well be effected without requiring defendant to go into the market and acquire shares for him, plaintiff may elect this remedy rather than action for damages. *West v. Tintie Standard Min. Co.*, 71 U. 158, 171, 263 P. 490, 56 A. L. R. 1190.

2. What puts company on inquiry.

Company is put on notice where stock stands in name of "trustee," and mere bailee may not transfer stock, as, for example, a person to whom certificates were entrusted for safekeeping. *West v. Tintie Standard Min. Co.*, 71 U. 158, 263 P. 490, 56 A. L. R. 1190; *State v. Jensen*, 74 U. 527, 280 P. 1046.

3. Title by estoppel.

While a stock certificate is not a negotiable instrument, an owner of such stock, who entrusts another with his stock certificate endorsed or signed in blank, clothes the party to whom the certificate is entrusted with such indicia of ownership that an unauthorized sale or pledge of the certificate by the latter to an innocent purchaser or pledgee for value is binding upon the true owner and prevents him from asserting a paramount interest in the shares. *Adams v. Silver Shield Min. & Mill. Co.*, 82 U. 586, 21 P. 2d 886.

4. Delivery of stock by mutual mistake of fact.

Where a corporation delivered too many shares of stock to the underwriter, and the underwriter sold the stock, the corporation was entitled to relief under the doctrine of restitution. *Wyoming Uranium Co. v. Reed*, 7 U. (2d) 417, 326 P. 2d 710.

Collateral References.

Corporations \Rightarrow 138.

18 C.J.S. Corporations § 408.

Right of rescission, 13 Am. Jur. 409, Corporations § 332.

Doctrine of "business compulsion," 79 A. L. R. 655.

Duress, threat of withdrawal or withholding of banking accommodation as, 33 A. L. R. 127.

Duty of officer or director toward one from whom he purchases stock, 84 A. L. R. 615.

Effect of entrusting another with stock certificate endorsed or assigned in blank to estop owner as against a bona fide purchaser or pledgee for value, 73 A. L. R. 1405.

False representations made by one person with intention that another may act thereon as actionable in favor of latter, 91 A. L. R. 1363.

Misrepresentation as to market price or market value as fraud, 71 A. L. R. 622.

Misrepresentation or mistake as to whether corporate stock is assessable as one of law or of fact, 65 A. L. R. 1256.

Mistake as to law of another state or country as one of law or of fact, 73 A. L. R. 1260.

Necessity, as condition of action at law, or a defense thereto, based on rescission of contract, of return or tender before

action, of securities, commercial paper, or documents evidencing property or contractual rights received as consideration, 105 A. L. R. 1003.

Promises and statements as to future events as fraud, 51 A. L. R. 46, 68 A. L. R. 635, 91 A. L. R. 1295, 125 A. L. R. 879.

Respective rights of owner of certificate of stock who entrusts it to a third person and a purchaser from the latter under a forged transfer or endorsement, 54 A. L. R. 353.

Validity of contract executed under duress exercised by third person, 4 A. L. R. 864, 62 A. L. R. 1477.

Waiver of fraud by principal's performance of contract with third person, or payment of commissions to broker with knowledge of fraud, 69 A. L. R. 1082.

16-3-8. Bona fide purchasers for value protected.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

History: L. 1927, ch. 55, § 8; R. S. 1933 & C. 1943, 18-3-8.

Collateral References.

Corporations ⇨ 149.

18 C.J.S. Corporations § 444.

Bona fide purchasers, 13 Am. Jur. 403, 409, Corporations §§ 325, 332.

Effect of entrusting another with stock certificate endorsed or assigned in blank to estop owner as against a bona fide purchaser or pledgee for value, 73 A. L. R. 1405.

Pledgee of corporate stock as security for an antecedent debt as a bona fide purchaser within the rule which protects such purchasers against the equities of third persons, 9 A. L. R. 1619.

16-3-9. Delivery of certificate without endorsement.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the endorsement requisite for the transfer of the certificate and the shares represented thereby but with intent to transfer such certificate or shares shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering to complete the transfer by making the necessary endorsement. The transfer shall take effect as of the time when the endorsement is actually made. This obligation may be specifically enforced.

History: L. 1927, ch. 55, § 9; R. S. 1933 & C. 1943, 18-3-9.

1. Construction and application.

This section contemplates that one who receives an unendorsed certificate from owner with intent of latter to transfer certificate and shares represented thereby acquires an interest in both and can require legal transfer by paying or tendering amount of purchase price; and by granting

holder of unendorsed certificate the right to specifically enforce an endorsement. legislature acknowledged the possibility of acquiring interest in certificate by sale or otherwise without a completed endorsement. *Taylor v. Daynes*, 118 U. 61, 218 P. 2d 1069.

This section must be interpreted in the light of the definitions contained in 16-3-20. *Taylor v. Daynes*, 118 U. 61, 281 P. 2d 1069.

2. Failure to endorse certificate.

"A seller of stock should be at liberty to protect his certificate from passing into the hands of innocent third parties until such time as payment is tendered and if the certificate is delivered unconditionally but endorsement is withheld for security reasons, the failure to endorse does not evidence an intention not to complete the

sale." *Taylor v. Daynes*, 118 U. 61, 218 P. 2d 1069.

Collateral References.

Corporations 111.

18 C. J. S. Corporations § 388.

Negotiability of certificates, 13 Am. Jur. 403, 415, Corporations §§ 325, 326, 341.

16-3-10. Transfers without delivery of certificate.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer, and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

History: L. 1927, ch. 55, § 10; R. S. 1933 & C. 1943, 18-3-10.

16-3-11. Warranties of transferor.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants:

- (1) That the certificate is genuine;
- (2) That he has a legal right to transfer it; and,
- (3) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate the liability of the assignor upon such warranty shall not exceed the amount of the claim.

History: L. 1927, ch. 55, § 11; R. S. 1933 & C. 1943, 18-3-11.

Collateral References.

Corporations 120.

18 C.J.S. Corporations § 406.

Warranties, 13 Am. Jur. 408, Corporations § 331.

Liability to true owner of broker or other agent who sells negotiable securities which have been stolen, 73 A. L. R. 1342.

Validity, construction, and application of guaranty of corporate stock, or dividends thereon, by one other than corporation, 107 A. L. R. 1171.

16-3-12. Warranty of pledgee or mortgagee.—A mortgagee, pledgee, or other holder for security, of a certificate, who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate or the value of the shares represented thereby.

History: L. 1927, ch. 55, § 12; R. S. 1933 & C. 1943, 18-3-12.

18 C.J.S. Corporations § 426.

Warranties, 13 Am. Jur. 408, Corporations § 331.

1. Construction and application.

Attachment or garnishment of corporate stock at common law and under the statute was discussed in *Untermeyer v. State Tax Comm.*, 102 U. 214, 129 P. 2d 881.

Effectiveness, as pledge, of transfer of corporate stock, 53 A. L. R. 2d 1399.

Right of pledgee of corporate stock to have it transferred to him on books of company, 116 A. L. R. 571.

Collateral References.

Corporations 123(10).

16-3-13. Attachment or levy—Necessity of seizure of certificate—Right to new certificate.—No attachment or levy upon shares of stock for which

a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

History: L. 1927, ch. 55, § 13; R. S. 1933 & C. 1943, 18-3-13.

Cross-References.

Water stock, apportionment upon sale of land, redemption from mortgage foreclosure, 78-37-6.

Writs of attachment, Rules of Civil Procedure, Rule 64C.

1. Notice to corporation required.

This statute does not supersede that part of Rule 64C(e)(5) requiring the giving of notice to the corporation or company at

the time of attachment or levy. *Glenn v. Ferrell*, 5 U. (2d) 439, 304 P. 2d 380.

Collateral References.

Attachment—165.

7 C.J.S. Attachment § 224.

Issuance by corporation of new stock certificates without requiring surrender of old, 61 A. L. R. 436, 150 A. L. R. 148.

Situs of corporate stock (or stock in joint stock company) for purpose of attachment, garnishment or execution, 122 A. L. R. 338.

16-3-14. Equitable aid to creditor in attaching certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof, as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History: L. 1927, ch. 55, § 14; R. S. 1933 & C. 1943, 18-3-14.

43 C.J.S. Injunctions § 42.

Collateral References.

Injunction—27.

Enjoining transfer of stock on books of corporation, 54 A. L. R. 1421.

16-3-15. Limited lien of corporation on its shares.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any bylaws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

History: L. 1927, ch. 55, § 15; R. S. 1933 & C. 1943, 18-3-15.

1. Appraisement of stock.

Bylaws of corporation were not invalid as an unreasonable restraint on alienation in providing for appraisement of values of capital stock of stockholder desiring to sell or transfer it. *Shumaker v. Utex Exploration Co.*, 157 F. Supp. 68, 73.

Collateral References.

Corporations—161.

18 C.J.S. Corporations § 365.

Lien of a corporation, 13 Am. Jur. 444, Corporations § 379 et seq.

Uniform Stock Transfer Act prohibiting restriction on transfer of shares unless such restriction is stated on the certificate, 29 A. L. R. 2d 901.

Right to refuse to register transfer of stock because of stockholder's indebtedness to corporation, where transfer is by operation of law, 65 A. L. R. 220.

Validity and construction of corporate articles or bylaws relating to stock held by one retiring from corporate office or employment, 66 A. L. R. 1295.

Validity of restrictions by corporations on alienation or transfer of corporate stock, 65 A. L. R. 1159, 61 A. L. R. 2d 1318.

Construction and effect of section 15 of

16-3-16. Alteration of certificate—Rights of owner and transferee.—

The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

History: L. 1927, ch. 55, § 16; R. S. 1933 § 18 C.J.S. Corporations § 388.
& C. 1943, 18-3-16.

Collateral References.
 Corporations § 111.

18 C.J.S. Corporations § 388.

16-3-17. Lost or destroyed certificates—Replacement.—

Where a certificate has been lost or destroyed a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation, and on reasonable notice by publication and in any other way which the court may direct to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

History: L. 1927, ch. 55, § 17; R. S. 1933 § 18 C.J.S. Corporations § 388.
& C. 1943, 18-3-17.

publication of statute relating to lost, destroyed, or stolen certificate of corporate stock, 125 A. L. R. 997.

Collateral References.

Corporations § 109.

18 C.J.S. Corporations § 266.

Compelling issuance of duplicate certificate where original is lost or stolen, 13 Am. Jur. 401, Corporations § 23.

Rights and liabilities of parties to bond given as condition to issuance of new corporation stock certificate, investment trust certificate, or other security in place of one lost or stolen, 112 A. L. R. 900.

Rights of owner and bona fide purchaser of lost or stolen stock certificates, 52 A. L. R. 947.

Constitutionality, construction, and ap-

16-3-18. Endorsement, how made.—

A certificate is endorsed when an assignment or a power of attorney to sell, assign or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is endorsed though it has not been delivered.

History: L. 1927, ch. 55, § 20; R. S. 1933 § 18 C.J.S. Corporations § 392.
& C. 1943, 18-3-18.

18 C.J.S. Corporations § 392.

Negotiability of certificates, 13 Am. Jur. 403, Corporations §§ 325, 326.

Collateral References.

Corporations § 114.

16-3-19. Owner named in certificate and specified endorsee deemed owner until endorsement.—

The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof and of the shares represented thereby, until and unless he endorses the

certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof, until and unless he also endorses the certificate to another specified person. Subsequent special endorsements may be made with like effect.

History: L. 1927, ch. 55, § 21; R. S. 1933 **Collateral Reference.**
& C. 1943, 18-3-19.

Certificates of stock and transfer of shares, 13 Am. Jur. 397, Corporations § 319 et seq.

16-3-20. Definitions.—(1) In this chapter, unless the context or subject matter otherwise requires:

“Certificate” means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with the provisions of this chapter.

“Delivery” means voluntary transfer of possession from one person to another.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Shares” means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with the provisions of this chapter.

“State” includes state, territory, district and insular possession of the United States.

“Transfer” means transfer of legal title.

“Title” means legal title and does not include a merely equitable or beneficial ownership or interest.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of this chapter when it is in fact done honestly, whether it is done negligently or not.

History: L. 1927, ch. 55, § 22; R. S. 1933 18 C.J.S. Corporations § 262.
& C. 1943, 18-3-20.

Comparable Provision.

Identical with section 22 of the Uniform Act except for following slight variance: in definition of “shares” the closing words are “consistent with this act.”

Remedy for refusal of corporation or its agent to register or effectuate transfer of stock, 22 A. L. R. 2d 12.

Uniform Stock Transfer Act as applicable to shares in savings and loan associations or building and loan associations, 143 A. L. R. 1152.

Collateral References.

Corporations—95.

16-3-21. Effective date of chapter’s application.—The provisions of this chapter apply to certificates heretofore issued or hereafter to be issued; provided, however, that said provisions shall not apply to certificates issued prior to July 1, 1927, where such application would abridge any right or impair the obligation of any contract existing at the date of the adoption of these statutes.

History: L. 1927, ch. 55, § 23; R. S. 1933 & C. 1943, 18-3-21.

sions of this act apply only to certificates issued after the taking effect of this act."

Comparable Provision.

Varying from section 23 of the Uniform Act which reads as follows: "The provi-

Collateral References.

Statutes 250.
82 C.J.S. Statutes § 399.

CHAPTER 4

ASSESSMENTS

Section 16-4-1 to 16-4-3. Repealed.

- 16-4-4. Assessments—Provision by statute or in articles of incorporation necessary.
- 16-4-5. Procedure applicable in absence of provision in articles or bylaws.
- 16-4-6. Limit on right to levy assessments.
- 16-4-7. Equal assessments required.
- 16-4-8. Order levying—Contents.
- 16-4-9. Notice of order of assessment—Form and contents.
- 16-4-10. Service and publication of notice of order.
- 16-4-11. Repealed.
- 16-4-12. Notice of delinquency—Form.
- 16-4-13. Delinquency notice—Contents.
- 16-4-14. Publication of notice of delinquency.
- 16-4-15. Jurisdiction acquired by publication.
- 16-4-16. Amount of stock to be sold.
- 16-4-17. "Highest bidder" defined.
- 16-4-18. Purchase by corporation.
- 16-4-19. Status of stock purchased by corporation.
- 16-4-20. Extension of time specified in notices.
- 16-4-21. Errors or omissions in proceedings—Effect.
- 16-4-22. Actions to recover stock sold—Tender—Limitation of action.
- 16-4-23. Affidavit of posting notice—Who may make—Evidence.
- 16-4-24. Irrigation companies—Assessments—Other than pro rata basis.

16-4-1 to 16-4-3. Repealed.

Repeal.

These sections (R. S. 1898 & C. L. 1907, §§ 355, 356; C. L. 1917, §§ 901, 902; L. 1921, ch. 22, § 1; R. S. 1933 & C. 1943, 18-4-1 to

18-4-3) relating to calls were repealed by Laws 1961, ch. 28, § 142. For present provisions, see 16-10-16.

16-4-4. Assessments—Provision by statute or in articles of incorporation necessary.—The stock of any corporation organized after March 8, 1894 and prior to January 1, 1962 under the laws of this state shall not be assessable for any purpose whatever, except to such extent and in such manner as may be expressly provided by statute or in the articles of incorporation; provided, that, if such stock is made assessable and the manner of levying the assessment is not provided for, it shall be levied in the manner and form hereinafter prescribed. The stock of any corporation for profit organized under the laws of this state after December 31, 1961, shall not be assessable for any purpose except as expressly provided by statute and except that water companies, water users associations, irrigation companies, canal companies, ditch companies, reservoir companies and other corporations of like character and purpose whose articles of incorporation provide for the assessment of shares may levy assessments at the times and in the amounts as may be prescribed by its articles of incorporation, or, if not so prescribed, then as provided in this chapter.

History: R. S. 1898 & C. L. 1907, § 354; C. L. 1917, § 900; L. 1921, ch. 22, § 1; R. S. 1933 & C. 1943, 18-4-4; L. 1961, ch. 29, § 1.

Compiler's Note.

The 1961 amendment deleted the words "full-paid" before "stock" in the first sentence; inserted the words "and prior to January 1, 1962" after "March 8, 1894"; inserted the words "by statute or" after "expressly provided," and added the last sentence.

Cross-Reference.

Formation of water companies and other companies of like character under Utah Business Corporation Act, 16-10-142.

Collateral References.

Corporations—175.
18 C.J.S. Corporations § 486.
Contract against assessments, 13 Am. Jur. 395, Corporations § 317.

DECISIONS UNDER FORMER LAW

1. In general.

This section was derived from 2 Comp. Laws 1888, p. 43, § 2393, but differing therefrom in some particulars. Henderson v. Turngren, 9 U. 432, 35 P. 495; Gary v. York Min. Co., 9 U. 464, 35 P. 494.

2. Construction and application.

Under this section the stock must in fact be fully paid, whatever the articles of association may provide on the subject. Henderson v. Turngren, 9 U. 432, 35 P. 495, applying 2 Comp. Laws 1888, § 2393.

The words "call" and "assessment" seem to be used interchangeably. Gary v. York Min. Co., 9 U. 464, 35 P. 494.

3. Full-paid stock.

Power of corporation to levy assessment on full-paid capital stock must be derived from statute, or articles of incorporation, or some other express promise to pay it. Nelson v. Keith-O'Brien Co., 32 U. 396, 91 P. 30.

In absence of statutory authority or power conferred by articles of incorporation, or by some express promise to pay on part of stockholder, there can be no valid assessment levied on fully paid-up stock of private corporation. Forsyth v. Selma Mines Co., 58 U. 142, 197 P. 586. All assessments on full-paid stock are voluntary; that is, they can be made only by and with the consent of the stockholder. Such consent may be expressed in the articles of incorporation, or otherwise. Dotson v. Hoggan, 44 U. 295, 299, 140 P. 128.

Provision of 16-4-2, that no assessment should exceed ten per cent of outstanding capital stock except under specified circumstances, does not apply to assessments on fully paid-up stock authorized by articles of incorporation, where assessment is necessary to carry on corporate business

and preserve corporate property and to pay its just obligations. Forsyth v. Selma Mines Co., 58 U. 142, 197 P. 586.

4. Amendment of articles.

Where articles of incorporation declared stock assessable to some extent and for certain purposes, and then expressly conferred upon majority of stockholders the authority to amend articles in any respect, it was held that majority of outstanding capital stock had right to amend articles, so as to authorize assessment on full-paid capital stock. Nelson v. Keith-O'Brien Co., 32 U. 396, 91 P. 30.

Under 16-2-48, majority stockholders of corporation cannot amend articles of incorporation so as to make fully-paid stock assessable. Garey v. St. Joe Min. Co., 32 U. 497, 91 P. 369, 12 L. R. A. (N. S.) 554.

5. Treasury stock.

It is not necessary that treasury stock be sold before assessment can be levied to pay debts, where articles of incorporation leave disposition of such stock to discretion of board of directors, and it appears that no substantial amount could have been realized on its sale. Nelson v. Keith-O'Brien Co., 32 U. 396, 91 P. 30.

Although articles of incorporation provided that no assessment should be levied while there was treasury stock remaining in treasury, and at time of levy of assessment there was undisposed of stock in treasury, assessment was not void where stock so remaining had no salable or other substantial value. Jones v. Bonanza Min. & Mill. Co., 32 U. 440, 91 P. 273.

6. Evidence.

The best evidence as to whether the stock in question was or was not nonassessable would be the articles of incorporation. Smith v. Gilbert, 49 U. 510, 164 P. 1026.

16-4-5. Procedure applicable in absence of provision in articles or bylaws.—Unless otherwise provided in the articles of incorporation or bylaws,

assessments when authorized shall be levied and collected in the manner provided in this chapter.

History: Code Report; R. S. 1933 & C. 1943, 18-4-5; L. 1961, ch. 29, § 2.

Compiler's Notes.

Prior to the 1961 amendment, this section read as follows: "Unless otherwise provided in the articles of incorporation, bylaws or subscription agreement, calls and assessments when authorized shall be

levied and collected in the manner provided in the following sections."

This section was derived from 2 Comp. Laws 1888, p. 6, § 2376.

Collateral Reference.

Contract against assessments, 13 Am. Jur. 395, Corporations § 317.

DECISIONS UNDER FORMER LAW

1. In general.

Unless the articles expressly provide otherwise, the remedy was formerly limited to a forfeiture and sale of the stock. *Henderson v. Turngren*, 9 U. 432, 35 P. 495; *Gary v. York Min. Co.*, 9 U. 464, 35 P. 494.

2. Resolutions and bylaws.

A resolution adopted by the subscribers to the stock, making a call for unpaid sub-

scriptions, which resolution was passed at the meeting for organization, and regularly entered in the minute book of the company, was held to have the same force and effect as a bylaw, at least upon all subscribers to stock who assented to it and acted in obedience to its terms, although it might have been adopted with the same formality as a bylaw. *Clay Co. v. Harvey*, 9 U. 497, 506, 35 P. 510.

16-4-6. Limit on right to levy assessments.—No assessment shall be levied while a portion of a previous one remains unpaid, unless:

(1) The power of the corporation has been exercised in accordance with the provisions of this chapter for the purpose of collecting such previous assessment; or,

(2) The collection of such previous assessment has been enjoined or restrained.

History: R. S. 1898 & C. L. 1907, § 357; C. L. 1917, § 903; R. S. 1933 & C. 1943, 18-4-6; L. 1961, ch. 29, § 3.

Compiler's Notes.

The 1961 amendment deleted the provisions concerning "calls."

Analogous former statute, see 2 Comp. Laws 1888, § 2376.

DECISIONS UNDER FORMER LAW

1. Right to levy assessment.

Power of corporation to levy assessment on full-paid capital stock must be derived from statute, or articles of incorporation, or some other express promise to pay it. *Nelson v. Keith-O'Brien Co.*, 32 U. 396, 91 P. 30.

2. Prior assessment.

A prior assessment does not remain unpaid where stockholder's note was accepted in full settlement and credit is given to him by company for full amount of assessment, even though such amount was short of full payment because of a misunderstanding. *Smith v. Sinaloa Land & Fruit Co.*, 42 U. 445, 132 P. 556.

Under this section, where stockholder lends company sum of money in cash and for which it gives its note, a credit by

company on note of an assessment levied on the stock is payment of such assessment, so as to authorize a subsequent assessment. *Smith v. Sinaloa Land & Fruit Co.*, 42 U. 445, 132 P. 556.

If stockholder voluntarily deposits in bank to credit of company money to be used in paying company debts, he is entitled to credit for such sum on an assessment subsequently levied on his stock. *Dotson v. Hoggan*, 44 U. 295, 140 P. 128.

3. Restraining order.

Restraining order, issued pending order to show cause why temporary injunction should not issue until final determination of suit, is not intended as injunction pendente lite, and is not injunction within meaning of statute. *Miles v. Sheep Rock Min. & Mill. Co.*, 15 U. 436, 49 P. 536.

Where restraining order is issued pending order to show cause why temporary injunction should not issue until final determination of suit, it does not affect validity of assessment but simply suspends power to collect it until date fixed for hearing on order to show cause, and, if on date so fixed there is no appearance of parties and no continuance of hearing on motion for injunction, restraining order falls with motion and restraint on collection of assessment is at end. *Miles v. Sheep Rock Min. & Mill. Co.*, 15 U. 436, 49 P. 536.

4. Estoppel.

Under this section a stockholder present

16-4-7. Equal assessments required.—In the case of full-paid stock, all stock subject to assessment must be assessed equally.

History: Code Report; R. S. 1933 & C. 1943, 18-4-7; L. 1961, ch. 29, § 4.

Compiler's Note.

The 1961 amendment deleted a second sentence concerning levying calls on unpaid stock.

Collateral References.

Statutory or charter authority, 13 Am. Jur. 394, Corporations § 316 et seq.

Failure to enter transfer of stock on corporate books as affecting liability of transferor for calls or assessments, 45 A. L. R. 137, 104 A. L. R. 638.

16-4-8. Order levying—Contents.—Every order levying an assessment must specify the amount thereof on each share, when, to whom and where payable, fix a day subsequent to the full term of the notice of assessment on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

History: R. S. 1898 & C. L. 1907, § 358; C. L. 1917, § 904; R. S. 1933 & C. 1943, 18-4-8; L. 1961, ch. 29, § 5.

at a meeting authorizing levy of assessment is estopped by his conduct from complaining that portion of previous levy remains uncollected. *Gowans v. Rockport Irr. Co.*, 77 U. 198, 204, 293 P. 4.

5. Burden of proof.

In action by stockholder against the company to restrain sale of his stock for nonpayment of an assessment levied against it by defendant, the burden of proving these exceptions in the statute, which were negated in plaintiff's complaint, is upon him. *Smith v. Sinaloa Land & Fruit Co.*, 42 U. 445, 452, 132 P. 556.

Liability of transferor for calls or assessments as affected by failure to enter transfer of stock on corporate books, 45 A. L. R. 137, 104 A. L. R. 638.

Liability of transferor for calls or assessments as affected by insolvency, fraud, or illegality in transfer, 45 A. L. R. 99, 86 A. L. R. 57.

Purchaser's implied obligation to indemnify vendor of corporate stock against future calls and assessments, 141 A. L. R. 1351.

Right to recover back amount paid on an illegal or unauthorized assessment on corporate stock, 131 A. L. R. 138.

Compiler's Notes.

The 1961 amendment deleted "or call" after "assessments" in three instances.

Analogous former statute, see 2 Comp. Laws 1888, § 2377.

DECISIONS UNDER FORMER LAW

1. Forfeiture and sale.

As general rule, validity of forfeiture and sale of shares of stock for nonpayment of assessment depends on formal compliance with statutory requirements. *Raht v. Sevier Min. & Mill. Co.*, 18 U. 290, 54 P. 889.

Forfeiture of shares of stock for nonpayment of assessment, although irregular or defective in form, is not void but voidable only, and, by subsequent acqui-

escence, shareholder and corporation alike will be estopped to deny its validity. *Raht v. Sevier Min. & Mill. Co.*, 18 U. 290, 54 P. 889.

2. Relief from forfeiture.

Equity will refuse to assist stockholder who acquiesces in forfeiture of his shares, for nonpayment of assessment, as long as shares are valueless and then, when they become valuable by reason of changed cir-

cumstances or by efforts of innocent parties, seeks to be reinstated in rights which he has previously repudiated. Raht v. Sevier Min. & Mill. Co., 18 U. 290, 54 P. 889.

16-4-9. Notice of order of assessment—Form and contents.—Upon making the order the secretary shall cause to be issued a notice thereof in the following form:

(Name of corporation in full; location of principal place of business). Notice is hereby given that at a meeting of the board of directors held on the (date) an assessment of (amount) per share was levied on the stock (here insert the description of the class or classes of stock assessed) of the corporation, payable (when, to whom and where). Any stock upon which this assessment may remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and unless payment is made before will be sold on the (day appointed) to pay the delinquent assessment, together with the cost of advertising and expense of sale. (Signature of secretary, with location of office).

History: R. S. 1898, § 359; L. 1905, ch. 27, § 1; C. L. 1907, § 359; C. L. 1917, § 905; L. 1921, ch. 22, § 1; R. S. 1933 & C. 1943, 18-4-9; L. 1961, ch. 29, § 6.

Compiler's Note.

The 1961 amendment deleted all references to "calls" in this section.

16-4-10. Service and publication of notice of order.—The notice must be served personally on each stockholder, or in lieu of personal service must be sent through the mail addressed to each stockholder at his place of residence, if known, or if not known, at the place where the principal place of business of the corporation is situated, and must be published once a week for four successive weeks in some newspaper of general circulation in the place designated in the articles of incorporation as the principal place of business; provided, that corporations formed for irrigation purposes may omit publication of the notice, but in other respects must comply with the provisions of this chapter relating to assessments.

History: R. S. 1898, § 360; L. 1905, ch. 27, § 1; C. L. 1907, § 360; C. L. 1917, § 906; R. S. 1933 & C. 1943, 18-4-11; L. 1961, ch. 29, § 7.

Compiler's Note.

The 1961 amendment deleted the words "and calls" at the end of this section.

16-4-11. Repealed.

Repeal.

This section (R. S. 1898 & C. L. 1907, § 373; C. L. 1917, § 919; R. S. 1933 & C.

1943, 18-4-11), relating to actions to collect calls, was repealed by Laws 1961, ch. 28, § 142. For present provisions, see 16-10-16.

16-4-12. Notice of delinquency—Form.—If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein when the stock shall be delinquent, the secretary shall, unless otherwise ordered by the board of directors, cause to be published in the same newspapers in which the notice hereinbefore provided for shall have been published a notice in the following form:

(Name of corporation in full; location of principal place of business). Notice. There are delinquent upon the following described stock, on account of assessment levied on the day of, 19....., (and assessment levied previously thereto, if any) the several amounts set

opposite the names of the respective shareholders as follows: (Names, number of certificate, number of shares, and amount) and in accordance with law, (and an order of the board of directors made on the day of, 19....., if any such order shall have been made) so many shares of each parcel of such stock as may be necessary will be sold at the (particular place) on the day of, 19....., at the hour of, to pay the delinquent assessments thereon, together with the cost of advertising and expenses of the sale. (Name of secretary, with location of office).

History: R. S. 1898 & C. L. 1907, § 361; C. L. 1917, § 907; R. S. 1933 & C. 1943, 18-4-12; L. 1961, ch. 29, § 8.

Compiler's Note.

The 1961 amendment deleted all references to "calls" in this section.

Collateral Reference.

Notice, 13 Am. Jur. 370, Corporations § 278.

DECISIONS UNDER FORMER LAW

1. Validity of forfeiture and sale.

As general rule, validity of forfeiture and sale of stock depends on formal com-

pliance with statutory requirements. Schwab v. Frisco Min. & Mill. Co., 21 U. 258, 60 P. 940.

16-4-13. Delinquency notice—Contents.—The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except where certificates may not have been issued, in which case the number of shares and amount due thereon, together with the fact that certificates for such shares have not been issued, must be stated.

History: R. S. 1898 & C. L. 1907, § 362; C. L. 1917, § 908; R. S. 1933 & C. 1943, 18-4-13.

Collateral Reference.

Conditions precedent, 13 Am. Jur. 623, Corporations § 626.

16-4-14. Publication of notice of delinquency.—The notice when published in a daily newspaper must be published for ten days previous to the day of sale; when published in a weekly or semiweekly paper it must be published in each issue thereof for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

History: R. S. 1898 & C. L. 1907, § 363; C. L. 1917, § 909; R. S. 1933 & C. 1943, 18-4-14.

Collateral References.

Corporations § 175.
18 C.J.S. Corporations § 486.

16-4-15. Jurisdiction acquired by publication.—By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or expenses of advertising remains unpaid at the hour appointed for the sale, subject however to assessments subsequently levied, but the corporation must sell no more of such stock than is necessary to pay the assessments due and expenses of advertising and sale.

History: R. S. 1898 & C. L. 1907, § 364; C. L. 1917, § 910; R. S. 1933 & C. 1943, 18-4-15; L. 1961, ch. 29, § 9.

Compiler's Note.

The 1961 amendment deleted all references to "calls" in this section.

Cross-Reference.

Securities commission sales exempted from title, 61-1-6.

Collateral References.

Exclusiveness of statutory remedy of

sale or forfeiture of stock to enforce liability for assessment, 83 A. L. R. 892.

Liability to creditors of stockholders whose stock is forfeited or sold for non-payment of assessments, 19 A. L. R. 1096.

DECISIONS UNDER FORMER LAW**1. Right of stockholder.**

The stockholder has the option either to pay the assessment or forfeit his stock, and unless he consents he may not be sued in the courts to recover the assessment by the corporation, much less by one of

the creditors. *Dotson v. Hoggan*, 44 U. 295, 299, 140 P. 128.

The personal or individual liability of holder of full-paid stock for assessments could not be changed without his consent. *Weede v. Emma Copper Co.*, 58 U. 524, 200 P. 517, applying Laws 1903.

16-4-16. Amount of stock to be sold.—On the day, at the place and at the time appointed in the notice of sale the secretary shall, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying shall only be required to pay the actual expenses of advertising in addition to the assessment.

History: R. S. 1898 & C. L. 1907, § 365; C. L. 1917, § 911; R. S. 1933 & C. 1943, 18-4-16; L. 1961, ch. 29, § 10.

Compiler's Note.

The 1961 amendment deleted "or call" after "assessment" in three instances.

16-4-17. "Highest bidder" defined.—The person offering at such sale to pay the assessment and expenses for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and expenses.

History: R. S. 1898 & C. L. 1907, § 366; C. L. 1917, § 912; R. S. 1933 & C. 1943, 18-4-17; L. 1961, ch. 29, § 11.

Compiler's Note.

The 1961 amendment deleted "or call"

after "assessment" in two instances in the first sentence, and deleted the last two sentences concerning the liability of the purchaser and of the original stockholder for the amount of calls unpaid after the sale.

16-4-18. Purchase by corporation.—If at the sale of stock no bidder offers the amount of the assessment and expenses due, the same may be bid in and purchased by the corporation through the secretary, president or any director thereof at the amount of the assessment and expenses due, and the amount of the assessment and expenses shall be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation shall be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor shall any dividends be declared thereon, but all assessments and dividends shall be apportioned upon the stock held by the stockholders of the corporation.

History: R. S. 1898 & C. L. 1907, § 367; C. L. 1917, § 913; R. S. 1933 & C. 1943, 18-4-18; L. 1961, ch. 29, § 12.

Compiler's Note.

The 1961 amendment deleted all references to "calls" in this section.

16-4-19. Status of stock purchased by corporation.—All purchases of its own stock by the corporation for delinquent assessments vest the legal title to the same in the corporation, and the stock so purchased shall be treated as treasury stock and shall be held and disposed of in such manner as may be expressly provided in the Utah Business Corporation Act.

History: R. S. 1898, § 368; L. 1903, ch. 94, § 1; C. L. 1907, § 368; C. L. 1917, § 914; R. S. 1933 & C. 1943, 18-4-19; L. 1961, ch. 29, § 13.

Compiler's Note.

The 1961 amendment substituted "in the Utah Business Corporation Act" for "in the bylaws or articles of incorporation" after "expressly provided" and deleted the remainder of the section which read: "and in case there is no such provision, then

the same shall be held subject to the control of the board of directors, which may make such disposition thereof as it may deem for the best interests of the corporation. In the case of purchases by the corporation for delinquent calls the stock so purchased shall be treated as unissued stock."

Cross-Reference.

Utah Business Corporation Act, 16-10-1 et seq.

DECISIONS UNDER FORMER LAW

1. Fraudulent issue—relief.

Shares of stock, which had come back to corporation over period of years as result of unpaid special assessments and which could be treated as unissued stock under this section, were fraudulently issued for purpose of retaining control of

corporation, so as to be subject to cancellation in suit in equity. *Floor v. Johnson*, 114 U. 313, 199 P. 2d 547 (other appeals in *State ex rel. Kahn v. Johnson*, 114 U. 333, 199 P. 2d 556, and *New Quincy Mining Co. v. Johnson*, 114 U. 342, 199 P. 2d 561).

16-4-20. Extension of time specified in notices.—The dates fixed in any notice of assessment or notice of delinquent sale published according to the provisions hereof may be extended from time to time by order of the board of directors entered on the records of the corporation for any period or periods aggregating not more than six months, but no order extending the time for the performance of any act specified in any notice shall be effective unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

History: R. S. 1898 & C. L. 1907, § 369; C. L. 1917, § 915; R. S. 1933 & C. 1943, 18-4-20; L. 1961, ch. 29, § 14.

Compiler's Note.

The 1961 amendment deleted "or call" after "assessment."

16-4-21. Errors or omissions in proceedings—Effect.—No assessment is invalidated by a failure to make publication of the notices herein provided for, nor by the nonperformance of any act required in order to enforce payment of the same, but in case of any substantial error or omission in the course of proceedings for collection all previous proceedings, except the levying of the assessment are void, and publication must be begun anew.

History: R. S. 1898 & C. L. 1907, § 370; C. L. 1917, § 916; R. S. 1933 & C. 1943, 18-4-21; L. 1961, ch. 29, § 15.

For analogous former statute, see 2 Comp. Laws 1888, § 2390.

Collateral References.

Corporations—175.
18 C.J.S. Corporations § 486.

Compiler's Notes.

The 1961 amendment deleted "or call" after "assessments" in two instances.

DECISIONS UNDER FORMER LAW

1. Validity of forfeiture and sale.

As general rule, validity of forfeiture and sale of shares of stock for nonpayment of assessment depends on formal compliance with statutory requirements. *Raht v. Sevier Min. & Mill. Co.*, 18 U. 290, 54 P. 889.

Forfeiture of shares of stock for nonpayment of assessment, although irregular or defective in form, is not void but voidable only, and, by subsequent acquiescence, shareholder and corporation alike will be estopped to deny its validity. *Raht*

v. Sevier Min. & Mill. Co., 18 U. 290, 54 P. 889.

2. Equitable relief.

Equity will refuse to assist stockholder who acquiesces in forfeiture of his shares, for nonpayment of assessment, as long as shares are valueless and then, when they become valuable by reason of changed circumstances or by efforts of innocent parties, seeks to be reinstated in rights which he has previously repudiated. *Raht v. Sevier Min. & Mill. Co.*, 18 U. 290, 54 P. 889.

16-4-22. Actions to recover stock sold—Tender—Limitation of action.—

No action shall be sustained to recover stock sold for delinquent assessment upon the ground of irregularity or defect of the notice of the sale or defect or irregularity in the sale, unless the person seeking to maintain such action first pays or tenders to the corporation or to the person holding the stock sold the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, or in the case of stock sold to the corporation, all subsequent assessments levied upon the outstanding stock of the corporation, and interest on such sums from the time they were paid or payable; and no such action shall be sustained unless the same is commenced by the filing of a complaint within six months after such sale was made.

History: R. S. 1898 & C. L. 1907, § 371; C. L. 1917, § 917; R. S. 1933 & C. 1943, 18-4-22; L. 1961, ch. 29, § 16.

For analogous former statute, see 2 Comp. Laws 1888, § 2391.

Collateral Reference.

Enforcement, 13 Am. Jur. 617, Corporations § 617 et seq.

Compiler's Notes.

The 1961 amendment deleted "or call" and "or calls" after the words "assessment" and "assessments" respectively.

DECISIONS UNDER FORMER LAW

1. Statute of limitations.

Action to recover corporate stock, sold for nonpayment of assessment, on ground of fraud and noncompliance with statute, held barred, where plaintiff, who was one of directors of corporation, voted for assessment, received notice of sale of delinquent stock, and acquiesced in sale of his shares and slept on his rights for more than three years. *Raht v. Sevier Min. & Mill. Co.*, 18 U. 290, 54 P. 889.

2. Estoppel.

Equity will refuse to assist stockholder who acquiesces in forfeiture of his shares, for nonpayment of assessment, as long as shares are valueless and then, when they become valuable by reason of changed circumstances or by efforts of innocent parties, seeks to be reinstated in rights which he has previously repudiated. *Raht v. Sevier Min. & Mill. Co.*, 18 U. 290, 54 P. 889.

16-4-23. Affidavit of posting notice—Who may make—Evidence.—

Affidavits made by the secretary of the mailing of notices shall be prima-facie evidence thereof. The publication of notices relating to assessments may be proved by the affidavit of the printer foreman or principal clerk of the newspaper in which the same were published; and the affidavit of the secretary or auctioneer shall be prima-facie evidence of the time and place

of sale, of the quantity and particular description of the stock sold, and to whom and for what price, and of the fact of the purchase money being paid. The affidavits shall be filed in the office of the corporation and copies of the same certified by the secretary thereof shall be prima-facie evidence of the facts therein stated.

History: R. S. 1898 & C. L. 1907, § 372; C. L. 1917, § 918; R. S. 1933 & C. 1943, 18-4-23; L. 1961, ch. 29, § 17.

after "assessments" in the second sentence.

Compiler's Note.

The 1961 amendment deleted "or calls"

Effective Date.

Section 18 of Laws 1961, ch. 29, provided as follows: "This act shall take effect on January 1, 1962."

16-4-24. Irrigation companies—Assessments—Other than pro rata basis.
—Any irrigation company, canal company, ditch company, reservoir company or water users' association hereafter organized under the laws of this state shall have the power to make assessments against its shares of stock on other than a pro rata basis for the purpose of raising funds to accomplish the purpose or purposes for which organized or to pay its debts or obligations when the articles of incorporation so permit.

The provisions of this section shall also apply to any irrigation company, canal company, ditch company, reservoir company or water users' association heretofore organized the articles of incorporation of which now expressly so permit assessments to be made on other than a pro rata basis or to any irrigation company, canal company, ditch company, reservoir company, or water users' association heretofore or hereafter organized when required to make assessments on other than a pro rata basis under existing or future contract or contracts between the United States and any such company or water users' association or between the United States and stockholders of any such company or water users' association or between any such company or water users' association and its stockholders or when required by any contract of subscription for shares of stock to any such company or water users' association so contracting with the United States or under present or future laws or regulations of the United States.

History: R. S. 1933, 18-4-24, added by L. 1935, ch. 27, § 1; C. 1943, 18-4-24.

all acts in conflict therewith to the extent only of such conflict.

Repealing Clause.

Section 2 of Laws 1935, ch. 27, repealed

Collateral References.

Waters and Waters Courses—234.
93 C.J.S. Waters § 343.

CHAPTER 5 CONSOLIDATION

(Repealed by Laws 1961, ch. 28, § 142)

16-5-1 to 16-5-6. Repealed.

Repeal.

These sections (R. S. 1898, §§ 340, 341; L. 1905, ch. 131, § 1; C. L. 1907, §§ 340, 341; C. L. 1917, §§ 888, 889; L. 1921, ch. 22, § 1; R. S. 1933 & C. 1943, 18-5-1 to

18-5-6; L. 1943, ch. 27, § 1) relating to consolidation of corporations were repealed by Laws 1961, ch. 28, § 142. For present provisions, see 16-10-66 et seq.